

Remarks

This response to the second office action which the Examiner has made final is being submitted on behalf of the Applicant by the undersigned new counsel. A revocation of all prior powers of attorney and a grant of new power of attorney to the undersigned new counsel, along with the required statement under 37 CFR 3.73(b), is enclosed with this response. Despite the assignment of new counsel for Applicant, care has been taken not to present any new or amended claims that extend beyond the scope of the issues previously considered by the Examiner and/or presented on behalf of the Applicant by prior counsel. Applicant respectfully requests the Examiner to keep this circumstance in mind during consideration of the claims above and the remarks below.

Reference to paragraph numbers in the following remarks is to the official patent publication of this application, US 2005/0199441 A1.

Claims 1 to 7 have been cancelled without prejudice. New Claims 8 to 12 have been added to this application. Applicant submits that no new matter has been added in the new claims, that each is sufficiently supported by the original specification, and that the scope of the new claims is the same or substantially similar to the scope of the claims as originally filed such that no new or supplemental prior art search or consideration is required by the Examiner beyond the issues previously raised in previous office actions.

New Claim 8 comprises each and every element of original Claim 1 (previously canceled) with the elements of original Claim 6 (previously canceled and which was dependent on original Claim 1) added and including additional clarifying recitation that is literally supported in the specification at ¶[0027]. Thus, new Claim 8 is essentially the same or substantially similar to original Claim 6. As a result, each and every element presented in new Claim 8 has been presented and considered previously by the Examiner. Applicant will present traversing arguments below to address the obviousness rejection of original Claim 6 made by the Examiner in the first office action.

New Claim 9 depends from new Claim 8 and adds the elements from original Claim 2 (previously canceled) with the exception that the designation of “inner” and “outer” with regard to the riser sections has been reversed in light of the manner in which these sections are shown in the drawings (*see* Figs. 1, 2 and 5) (*Cf.* ¶[0022]).

New Claim 10 depends from new Claim 8 and adds the elements from original Claim 3 (previously canceled) with the exception that the grounds for rejection of Claim 3 in the first office action on the grounds of §112, ¶2 (lack of antecedent basis) have been addressed.

New Claim 11 depends from new Claim 8 and adds the elements from original Claim 4 (previously canceled) with the exception that the grounds for rejection of Claim 3 in the first office action on the grounds of §112, ¶2 (lack of clarity) have been addressed.

Finally, new Claim 12 depends from new Claim 11 and adds the elements from original Claim 5 (now canceled), with the exception that the new claim recites structural requirements of the walk board support edge (*see* ¶[0018]), rather than the previous impermissible recitation of a safety rail which is not shown in the drawings.

In light of the foregoing circumstances regarding counsel for Applicant, as well as the explanations regarding the scope and support for each of the newly added claims, Applicant respectfully requests entry of the new claims. To the extent that the new claims touch the merits of the application or are otherwise not proper for any reason, Applicant respectfully submits that the foregoing circumstances and explanations constitute a showing of good and sufficient reasons why they are necessary and were not earlier presented, and thus they should be admitted, pursuant to 37 CFR §1.116(c).

Applicant(s) request the Examiner to reconsider the rejections based on the following arguments:

Rejection under 35 U.S.C 103(a)

Because all of the claims previously rejected under §103(a) have been canceled without prejudice, and because new Claim 8 essentially contains each of the elements of original Claim 6 (as well as some similarity with previously presented and now canceled Claim 7), Applicant focuses this response to any rejection grounded in obviousness over a primary reference previously cited by the Examiner in view of Hutchinson. Such rejections in this case have taken the form of (1) Kilgore in view of Hutchinson, and (2) Flynn in view of Kilgore, Hutchinson and Fruth. Applicant traverses any such rejection and respectfully requests the Examiner reconsider and withdraw any such rejection due to a failure to establish a *prima facie* case of obviousness.

Hutchinson

In the previous office actions, the Examiner has stated that “Hutchinson shows swivel adjusting holes 46”, and that it would have been obvious “to provide Kilgore with swivel adjusting holes, as taught by Hutchinson, to allow perpendicular repositioning of his upper riser section” and to modify “the inner vertical riser section, as taught by Kilgore, to comprise perpendicular vertical adjustment holes, as taught by Hutchinson, to allow perpendicular repositioning of the upper hanger support, as taught by Fruth”.

First and foremost, Hutchinson fails to disclose anything that even remotely resembles the swivel adjusting holes that are located on a surface of the vertical riser and perpendicular to the vertical adjusting holes. As clearly shown in Figure 7, the perpendicular adjusting holes of Hutchinson are provided on the horizontally extending arm member (42) that engages the work wall (72) so that the arm member (42) can engage a vertical portion of an opening (74) in the work wall (72). Thus, there is no adjustment that can be made to the device of Hutchinson that will allow it to be mounted to a wall that is perpendicular to the work wall against which the walk boards are desired to be hung. The structure of Hutchinson would have to be modified so that the 90 degree rotation occurs somewhere along the scaffold brace (12). No where in Hutchinson is this taught or even suggested.

Primary and Other Secondary References – Kilgore, Fruth, Flynn

The Examiner has cited these other references as providing other elements of an adjustable hanger support, and has suggested that these references would be obvious to modify with Hutchinson to reach Applicant’s claimed invention.

In order for it to have been obvious for a person of ordinary skill in the art to modify these references with Hutchinson, there must be some teaching, suggestion or motivation provided by these references to do so. However, the Examiner has failed to show any such teaching, suggestion or motivation. None of these references teach, suggest or motivate one to consider a hanger support to hang from a second wall that is perpendicular to the work wall, that is the wall against which a user of the invention desires to have walk boards hung up for purposes of construction or other work purposes. Indeed, the Examiner suggests in the second office action that Fruth teaches perpendicular repositioning of the upper hanger support, but the Examiner has failed to point out the location of such teaching, and upon close inspection of Fruth, no such teaching has actually been found by Applicant (although Applicant respectfully requests leave to

re-inspect if the Examiner can later specifically cite any such teaching therein).

Each of these references, including Hutchinson itself, only refer to the work wall, and no mention is ever made or consideration ever given to use of the disclosed devices with a wall that is perpendicular to the work wall. Each of the cited references, including Hutchinson, pertains solely and exclusively to hanger supports mounted to and against the work wall.

In complete contrast, Applicant has disclosed and claimed embodiments of a hanger support that is configured to be hung or mounted to a second wall perpendicular to the work wall while still being adjacent the work wall for purposes of supporting the walk boards. This element not being taught, suggested, or motivated by any of the prior art references cited by the Examiner in this case, particularly with respect to any claim having the scope of new Claim 8 and the new dependent claims thereto, the Examiner cannot establish a prima facie case of obviousness of any claim to the hanger support of Claim 8 having swivel adjusting holes perpendicular to vertical adjusting holes provided on an adjustable vertical riser.

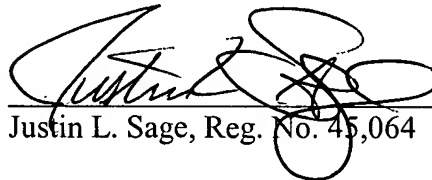
As pointed out by the Examiner in the second (final) office action, prior counsel for the Applicant failed to dispute the Hutchinson reference with respect to the combined teachings, rather only to the individual teaching therein. However, the foregoing remarks clearly and substantially dispute the suggested combinations of teachings from the references. In light of the foregoing, the Examiner has failed to establish a prima facie case of obviousness, and Applicant respectfully requests that any such rejection that may still apply to new Claim 8 be reconsidered and withdrawn.

Conclusion

Applicant has filed a complete response to the outstanding office action and only allowable claims remain pending in this application. In view of the above, Applicant respectfully requests the Examiner to withdraw all rejections and immediately to issue a Notice of Allowance for the pending claims. If a personal conversation will expedite the prosecution of this application, especially in light of Applicant's reassignment of counsel and of the second office action being made Final, the Examiner is requested to call the undersigned at (317) 797-7486.

Respectfully submitted,

Date: 1-24-06


Justin L. Sage, Reg. No. 45,064